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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA  
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9 DERRICK DEON VINCENT,

10 Petitioner,

11 vs.

12 E. K. MCDANIEL, et al.,

13 Respondents.  
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Case No. 2:10-cv-01991-APG-NJK

**ORDER**

15 Petitioner has filed an application to proceed in forma pauperis (#29) and an application to  
16 proceed in forma pauperis on appeal (#31). These applications are moot because the court already  
17 has granted petitioner leave to proceed in forma pauperis. See Order (#4).

18 Petitioner has filed a notice of appeal (#30), which he dated on July 6, 2015, and which the  
19 court received on July 7, 2015. The notice of appeal is untimely. The court denied the petition for a  
20 writ of habeas corpus on December 9, 2013, and the clerk entered judgment on December 10, 2013.  
21 Petitioner's address of record was the High Desert State Prison. The copy of the order and the  
22 judgment that the court sent to petitioner were returned in the mail on December 13, 2013, with the  
23 notation that petitioner was no longer at the High Desert State Prison. Petitioner has the  
24 responsibility of informing the court promptly of any changes in his address. LSR 2-2. Petitioner  
25 filed nothing until he filed a notice of change of address on April 3, 2015, stating that he was being  
26 held in the Clark County Detention Center. The court mailed petitioner a copy of the docket sheet  
27 on April 6, 2015. Petitioner's address has since changed back to the High Desert State Prison, but  
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petitioner did not submit any notice. Rather, the clerk changed the address based upon the return address on the envelope that petitioner sent to the court.

To the extent that the court can construe the notice of appeal as a motion to reopen the time to appeal pursuant to Rule 4(a)(6) of the Federal Rules of Civil Procedure, the court declines to do so. See United States v. Withers, 638 F.3d 1055, 1061 (9th Cir. 2011). Rule 4(a)(6) states:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

Rule 4(a)(6)(B) requires petitioner to satisfy two conditions, and petitioner cannot satisfy either one. He filed the notice of appeal more than 180 days after entry of the judgment on December 10, 2013.<sup>1</sup> He also filed the notice of appeal more than 14 days after receiving notice of the entry of judgment on or shortly after April 6, 2015. Because petitioner cannot satisfy the conditions of Rule 4(a)(6)(B), the court will not reopen the time to appeal.

IT IS THEREFORE ORDERED that the applications to proceed in forma pauperis on appeal (#29, #31) are **DENIED** as moot.

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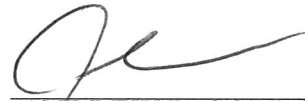
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<sup>1</sup>Petitioner might argue that the terms of Rule 4(a)(6)(B) are impossible to satisfy because he received notice of the entry of the judgment more than 180 days after entry of the judgment. However, petitioner was responsible for keeping the court informed promptly of any changes in address. Petitioner waited more than one year and three months after entry of judgment, and an unknown amount of time after his release or transfer from High Desert State Prison, to inform the court of his new address. The failure to meet the 180-day deadline lies entirely upon petitioner.

1 IT IS FURTHER ORDERED that the notice of appeal (#30), only to the extent that the court  
2 construes it as a motion to reopen the time to appeal, is **DENIED**.

3 DATED: July 27, 2015.

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6 ANDREW P. GORDON  
7 United States District Judge  
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